



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0371]

RIN 1625-AA00

Safety Zone; Penn's Landing Fireworks, Delaware River, Philadelphia PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the existing recurring fireworks safety zone on the Delaware River Adjacent to Penn's Landing in Philadelphia, Pennsylvania. This amendment allows the Coast Guard to enforce the safety zone at this location throughout the entire year. The Coast Guard will notify the public of upcoming enforcement of the zone through publication of a Notice of Enforcement in the Federal Register and Broadcast Notice to Mariners. This change will expedite public notification of events at the location and ensure the protection of the maritime public and event participants from the hazards associated with fireworks displays in the Delaware River adjacent to Penn's Landing.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0371 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone 215–271–4814, e-mail Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard routinely receives requests for fireworks displays in the Delaware River Adjacent to Penn’s Landing in Philadelphia, Pennsylvania. As a result, the Coast Guard previously issued a rule creating a recurring safety zone location for this location, listed as entry (a)16 in the table to 33 CFR 165.506. That regulation lists possible days of anticipated enforcement as July 2nd, 3rd, 4th, or 5th; Columbus Day; December 31st, and January 1st. In recent years, however, the number of firework events at this location have significantly increased. To date in the year 2018 there have been 13 requests for fireworks events at this location—many more than the anticipated number of approximately 3 events covered by the current regulation. The additional requests fall outside the enforcement dates listed in the CFR. As a result, the Coast Guard had to issue

numerous temporary safety zones to cover the additional events that fall outside of the coverage of the current regulation. In accordance with good cause exceptions found in 5 U.S.C. 553, the rules creating these temporary safety zones are generally not preceded by notice of proposed rulemaking due to the short lead-time often provided to the Coast Guard.

In response, on September 21, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Penn’s Landing Fireworks, Delaware River, Philadelphia PA” (83 FR 47852). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the comment period that ended October 22, 2018, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the fireworks to be used in this type of display will be a safety concern for anyone within a 500 yard radius of the fireworks barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published September 21, 2018. The comment was supportive of the proposed rulemaking. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule revises the recurring fireworks safety zone near Penn’s Landing, listed as entry (a)16 in the table to 33 CFR 165.506. Although this safety zone will be January

through December each year, enforcement of the safety zone will only be for short periods of time before, during and after fireworks shows at this location. In order to promote clarity, Penn's Landing has been added to the location column of the revised regulatory text. The column defining the boundaries of the regulated area has also been updated to improve clarity and more efficiently define the regulated area. The revised safety zone will cover all navigable waters of the Delaware River within 500 yards of a fireworks barge located at approximately 39° 56' 49" N, longitude 075° 08' 11" W, adjacent to Penn's Landing, Philadelphia, Pennsylvania.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and time of day of the safety zone. Only a small, designated area of the Delaware River will be impacted during enforcement. Consistent with the current regulatory text found in 33

CFR 165.506(d), the default time period this zone will be enforced during each activation is between 5:30 p.m. and 1 a.m. That regulation, however, allows for modifications in this timeframe. In practice, the zone is typically activated with only a two-hour enforcement time period. During the evening, when enforcement is occurring, commercial and recreational traffic is normally low. Notification of enforcement dates and times will be made, at a minimum, to the maritime community via Notice of Enforcement published in the Federal Register, Broadcast Notice to Mariners, and actual notice will be provided via on-scene enforcement vessels. Notifications will be updated as necessary to keep the maritime community informed of the status of the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have

a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will only be enforced for a short duration and excludes vessels from entry into or remaining within a specified area on the Delaware River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated

under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.506, revise entry (a)16 in the table to §165.506 to read as follows:

§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.

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Table to § 165.506		
(a) Coast Guard Sector Delaware Bay—COTP Zone		
* * * * *		
16 January 1st–December 31st: Any day specified by Notice of Enforcement published in the Federal Register and broadcast via	Penn’s Landing, Delaware River, Philadelphia PA; Safety Zone	All waters of Delaware River, adjacent to Penn’s Landing, Philadelphia, PA, within 500 yards of a fireworks barge at

Broadcast Notice to Mariners.		approximate position latitude 39° 56' 49" N, longitude 075° 08' 11" W.
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Dated: November 13, 2018,

Scott E. Anderson,
Captain, U.S. Coast Guard,
Captain of the Port Delaware Bay.

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